

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

January 10, 2008

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY
PRACTICES, Order No. 14697

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) pursuant to its authority under D.C. Official Code § 34-1439(c) (2007 Supp.),¹ adopts the attached Chapter 29 of Title 15 District of Columbia Municipal Regulations (“Chapter 29”). The attached Chapter 29 will become effective upon the date of publication of the Notice of Final Rulemaking (“NOFR”) in the *D.C. Register*.

II. BACKGROUND

2. On January 19, 2005, the Council of the District of Columbia adopted the Renewable Energy Portfolio Standard Act of 2004 (“RPS Act”) which, *inter alia*, requires the Commission to adopt regulations that implement the goals of the RPS Act.² By Order issued December 28, 2005, the Commission adopted Interim RPS rules.³ The Interim RPS rules were subsequently amended in several orders issued by the Commission.⁴ On November 2, 2007, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register* requesting comments on revised RPS rules that were based, in part, on the Interim RPS rules.⁵

3. On December 3, 2007, Pepco Energy Services (“PES”) and the Office of the People’s Counsel (“OPC”) filed comments on the NOPR.⁶ There were no reply comments to the NOPR.

¹ D.C. Official Code § 34-1439(c) (2007 Supp.).

² *Id.* at § 34-1431 *et. seq.*

³ *Formal Case No. 945, In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices (“F.C. No. 945”), Order No. 13840, rel. Dec. 28, 2005.*

⁴ *See F.C. No. 945, Order No. 13899; See also F.C. No. 945, Order No. 14225.*

⁵ *54 D.C. Register at 10646 – 10658 (November 2, 2007).*

⁶ *F.C. No. 945, Pepco Energy Services Comments (“PES Comments”), filed December 3, 2007; Comments of the Office of the People’s Counsel on the Adoption of the Interim Rules Governing*

III. DISCUSSION

A. OPC Comments

4. OPC states that it has reviewed the regulations and believes that they are consistent with the Commission's previous orders revising the Interim rules.⁷ In addition, OPC asserts that the electricity supplier compliance reporting provisions in Section 2901 and the renewable credit tracking provisions in Section 2903 will enable the Commission to exercise adequate oversight of the renewable energy market and protect consumers from market manipulation.⁸ Thus, OPC states that it supports the Commission's proposed RPS regulations.

B. PES Comments

5. In its comments, PES recommends two minor changes to the proposed RPS rules. First, PES asserts that Section 2901.5(f) should be modified in accordance with the RPS Act, which permits suppliers the option to satisfy their obligation under the law by either purchasing the necessary resources or paying a compliance fee.⁹ Specifically, PES states Section 2901.5(f) provides that a supplier must submit:

[a] calculation of any compliance fees owed due to the inability of the Energy Supplier to procure the required quantity of Tier One, Tier Two, or Solar Energy Renewable Energy Credits[.]¹⁰

PES contends that the above language implies that an energy supplier must pay the compliance fee because of an "inability" to procure the resources. PES argues that given the economics of the market, it may be practical and more cost effective for a supplier to pay the compliance fee rather than procure the resources.¹¹ Therefore, PES recommends that Section 2901.5(f) be modified to require that a supplier submit:

[a] calculation of any compliance fees owed by the Energy Supplier.¹²

Implementation and Compliance with the Renewable Energy Portfolio Standards [*sic*] Act ("OPC Comments"), filed December 3, 2007.

⁷ *F.C. No. 945*, OPC Comments at 2.

⁸ *Id.*

⁹ *F.C. No. 945*, PES Comments at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

6. Next, PES states that there is a possible typographical error in Section 2903.6 of the proposed rules.¹³ PES asserts that Section 2903.6(b) reads:

[a] report a statement on the quantity of electricity generated as determined by an engineering estimate (if appropriate) or revenue-quality meter.¹⁴

PES believes that the proper phrase should be, “[a] report or statement regarding the quantity of electricity” or “[a] statement indicating the quantity of electricity.”¹⁵

C. Commission Decision

7. The commenting parties did not suggest many changes to the Commission’s proposed RPS regulations, and the Commission will focus only on the regulations that the commenting parties’ addressed. Further, in response to the comments and based on the Commission’s own review of the proposed rules, the Commission is making clarifying changes to the regulations that do not represent an alteration of the intent, meaning, application, or exceed the scope of the original NOPR.

8. With regard to PES’s comments on Sections 2901.5(f) and 2903.6(b), the Commission determines that these sections should be modified as recommended. The Commission’s objective in proposing Section 2901.5(f) is to obtain an accurate calculation of the compliance fee owed by District electric suppliers for failure to comply with the RPS Act. PES’s suggested language is a technical amendment that clarifies the Commission’s original intent; therefore, we hereby modify Section 2901.5(f) as follows:

- (f) A calculation of any compliance fees owed by the Energy Supplier.

Similarly, the Commission accepts PES’s suggested change to Section 2903.6(b) in the proposed regulations. Consequently, the final Section 2903.6(b) will read:

- (b) A report or statement indicating the quantity of electricity generated as determined by an engineering estimate (if appropriate) or revenue-quality meter.

The revised section corrects a typographical error by inserting the word “or” which was inadvertently left out of the proposed regulation and replaces the word “on” with the word “indicating.”

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

9. Finally, the Commission, *sua sponte*, makes technical amendments to delete some redundant language and also clarify the original intent of the proposed regulations. Specifically, the Commission amends the following sections:

(1.) 2902.15 is amended by deleting the word "should" and replacing it with the word "shall" in the last sentence.

(2.) 2902.19 is amended by deleting the phrase "Electric Suppliers with" in the first line.

(3.) 2904.2 is amended by deleting the phrase "In the case of an electric supplier," and deleting the phrase "attempt to" in the first line.

(4.) 2904.6 is amended by deleting the phrase "for the local distribution company or other electric suppliers shall" and inserting the phrase "approved by the Commission may" in its place.

(5.) 2999.1 or "Definitions" is amended by inserting the phrase "or BTM generator" in the definition of "Behind-the-meter generator," and by inserting the phrase "solar energy source" in the definition of "Renewable energy credit or REC."

The Commission believes that the above changes do not alter the meaning of the proposed regulations.

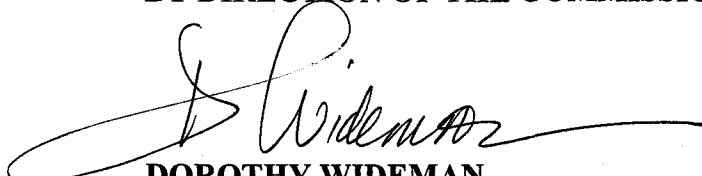
THEREFORE, IT IS ORDERED THAT:

10. The attached Chapter 29, "Renewable Energy Portfolio Standard" regulations are **ADOPTED**.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK


DOROTHY WIDEMAN
COMMISSION SECRETARY

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005**

CHAPTER 29 RENEWABLE ENERGY PORTFOLIO STANDARD

Section

2900	APPLICABILITY
2901	RPS COMPLIANCE REQUIREMENTS
2902	GENERATOR CERTIFICATION
2903	CREATION AND TRACKING OF RENEWABLE ENERGY CREDITS
2904	RECOVERY OF FEES AND COSTS
2905	WAIVER
2906-2998	[RESERVED]
2999	DEFINITIONS

2900 APPLICABILITY

2900.1 This Chapter establishes the Public Service Commission's ("Commission") Rules and Regulations governing the Renewable Energy Portfolio Standard ("RPS") applicable to an Electricity Supplier as provided in D.C. Official Code §§ 34-1431 - 34-1439.

2901 RPS COMPLIANCE REQUIREMENTS

2901.1 An Electricity Supplier shall meet the Renewable Energy Portfolio Standard requirement by obtaining Renewable Energy Credits ("REC") that equal the annual percentage requirement for electricity sold at retail or by paying the specified compliance fee. An Electricity Supplier shall not apply any surplus Renewable Energy Credits derived from voluntary purchases of energy from qualified renewable sources toward its mandatory compliance requirements.

2901.2 Each District of Columbia Electricity Supplier must establish a Generation Attribute Tracking System ("GATS") account for the load it serves within the District of Columbia. Suppliers shall maintain that account in good standing.

2901.3 Electricity Suppliers may acquire and accumulate Renewable Energy Credits as of January 1, 2006, in accordance with D.C. Official Code § 34-1433(c).

2901.4 Compliance with the Renewable Energy Portfolio Standard is on a calendar year basis beginning with calendar year 2007. Pursuant to D.C. Official Code § 34-1432(b), if the standard becomes applicable to electricity sold to a customer after the start of a calendar year, the standard

shall not apply to electricity sold to the customer during that portion of the year before the standard became applicable.

2901.5

Each Electricity Supplier must prepare and submit an annual Compliance Report to the Commission containing the following information:

- (a) The quantity of its annual District of Columbia retail electricity sales;
- (b) The quantity of any exempt retail electricity sales to a customer with a Renewable On-Site Generator;
- (c) A calculation of the annual quantity of required Tier One, Tier Two, and Solar Energy Renewable Energy Credits;
- (d) The quantity of Tier One, Tier Two, and Solar Energy Renewable Energy Credits purchased and evidence of those purchases;
- (e) The quantity of Tier One, Tier Two, and Solar Energy Credits transferred to the Electricity Supplier by a Renewable On-Site Generator;
- (f) A calculation of any compliance fees owed by the Energy Supplier;
- (g) Certification of the accuracy and veracity of the report;
- (h) All documentation supporting the data appearing in the annual compliance report;
- (i) A list of all Renewable Energy Credits used to comply with the Renewable Energy Portfolio Standard;
- (j) A summary report of Renewable Energy Credits retired during the reporting period; and
- (k) The total price paid for Tier One, Tier Two, and Solar Energy Renewable Energy Credits. The total price paid may be submitted confidentially so long as the words "Protected-Materials – Contains Competitive Business Information" or words of similar import are clearly printed on the top of each page. Suppliers that purchase RECs solely via bundled products are exempt from including the total price paid for Tier One, Tier Two and Solar Energy Renewable Energy Credits in their annual compliance reports.

- 2901.6 Each Electricity Supplier's annual compliance report shall be submitted to the Commission by May 1 of the calendar year following the year of compliance. The Commission shall complete its review of each Electricity Supplier's Compliance Report within 75 business days after submission. After notification of a decision of non-compliance by the Commission, a supplier shall submit the appropriate payment (or its response contesting the notification) within thirty (30) days.
- 2901.7 Any Electricity Supplier that fails to file the annual compliance report as required by this Chapter and D.C. Official Code § 34-1434(a) may be subject to Commission action to compel submission of the required report. Such action may include the issuance of an Order to Show Cause by the Commission.
- 2901.8 Any Electricity Supplier that fails to meet its Renewable Energy Portfolio Standard requirements must submit the required annual Compliance Fee to the District of Columbia Renewable Energy Development Fund administered by the District of Columbia Department of the Environment's Energy Office ("DDOE" or "Energy Office") by May 1 of the calendar year following the year of compliance.
- 2901.9 The Compliance Fee shall be:
- (a) \$25 for each Renewable Energy Credit shortfall for Tier One resources;
 - (b) \$10 for each Renewable Energy Credit shortfall for Tier Two resources; and
 - (c) \$300 for each Renewable Energy Credit shortfall for Solar Energy resources.

2902 GENERATOR CERTIFICATION

- 2902.1 Renewable electricity generators, including behind-the-meter ("BTM") generators, must be certified as a qualified resource by the Commission.
- 2902.2 Renewable electricity generators, including BTM generators, may be certified as a Tier One or Tier Two resource. In order to be certified, applicants must:
- (a) Complete the Commission's "Application for Certification as an Eligible District of Columbia Renewable Energy Standards Generating Facility" ("Regular Application") or

- (b) Complete the Commission's "Streamlined Application for Certification as an Eligible District of Columbia Renewable Energy Standards Generating Facility" ("Streamlined Application") in cases where the applicant has already been certified as a renewable energy resource by another PJM state and the Commission determines certification to be comparable to the Renewable Energy Portfolio Standards requirements in the District of Columbia. The applicant should refer to the Tier I and Tier II eligibility matrices available on the Commission's website to determine if the Streamlined Application can be submitted.

2902.3 The following states are deemed to be within the PJM Interconnection Region as of October 2007: Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

2902.4 The Renewable Energy Portfolio Standard ("RPS") Working Group shall identify any new renewable energy resource that has been certified by another PJM state that is eligible for participation in the District of Columbia's RPS. This information shall be included in the filing of the annual update to the Tier I and Tier II eligibility matrices to be submitted by February 1 of each calendar year.

2902.5 An applicant submitting a Regular Application or a Streamlined Application for certification as a renewable resource shall state, at a minimum:

- (a) The name of the Renewable Energy Facility for which the application is made and its address;
- (b) The name of the owner of the facility and the owner's contact information;
- (c) The name of the operator of the facility and the operator's contact information;
- (d) The name of a contact person and the person's contact information;
- (e) The location of the resource;
- (f) The renewable fuel type(s) and capacity information;
- (g) The commercial operation start date;
- (h) Whether the facility is a "behind-the-meter" generator;

- (i) Whether the power from the generation unit(s) has the potential to be delivered and consumed in the PJM Interconnection Region;
- (j) Whether the facility is certified by another state as an eligible generation resource to meet the portfolio standards of that state; and
- (k) The Office of Regulatory Information Systems Plant Location (“ORISPL”) Code for the facility.

2902.6 In addition to the information required in § 2902.5, an applicant submitting a Regular Application must also attach:

- (a) A current Certificate of Good Standing for the applicant issued by the state in which the business was formed;
- (b) A copy of the U.S. Department of Energy, Energy Information Administration Form EIA 860, if the rated capacity is greater than 1.0 MW;
- (c) A Certificate of Authorization to Conduct Business in the District of Columbia, if applicable;
- (d) An Affidavit of General Compliance;
- (e) Documentation of authority to sign on behalf of the Applicant; and
- (f) An Affidavit of Environmental Compliance from the state where the facility is located.

2902.7 In addition to the information required in § 2902.5, an applicant submitting a Streamlined Application must also attach an Affidavit of General Compliance and an Affidavit of Environmental Compliance.

2902.8 A Regular or Streamlined Application may be submitted at any time on the Commission-approved application forms. All application forms are available from the Office of the Commission Secretary or the Commission’s website at www.dcpsc.org/applications/applications.asp.

2902.9 The Commission shall issue a decision on the Regular Application forms within thirty (30) business days of filing. The generation resource shall be considered certified if the Commission has not acted within the thirty (30) business-day period, except where the Commission or its staff has issued a request for further information that is still outstanding.